

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright

December 4, 2000

~~An act to add Section 390.5 to the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately. An act to add Section 332.3 to the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical energy: forward contracts.

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding long-term contracts for the purchase of electricity and would state the intent of the Legislature with respect to the procurement of electricity by an electrical corporation. The bill would declare the intent of the Legislature that an electrical corporation, as defined, shall achieve and maintain a portfolio of electricity supplies for its bundled service customers.

This bill would amend the act to require the commission to reflect in bundled service rates, and to deem reasonable without engaging in a reasonableness review, any contract entered into by an electrical corporation in accordance with guidelines set forth in the bill.

~~(1) Existing law restructuring the electrical service industry requires a public utility electrical corporation to pay energy prices to nonutility~~

~~power generators based on a methodology prescribed by the Public Utilities Commission.~~

~~This bill would require the commission to immediately establish, by rule or order, procedures for the preapproval of forward contracts for the purchase of electrical energy. Those procedures would be required to provide for the protection of the proprietary information of utilities and other affected parties. Since a violation of a rule or order of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~(3) This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ —majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes—no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.~~ Section 390.5 is added to the Public Utilities
- 2 ~~SECTION 1.~~ (a) *The Legislature finds and declares that the*
- 3 *customers of an electrical corporation, as defined in Section 218*
- 4 *of the Public Utilities Code, will benefit by increased reliance on*
- 5 *long-term contracts, and less reliance on the spot markets,*
- 6 *including the day-ahead and real time markets. This increased*
- 7 *reliance on long-term purchases will bring needed price stability*
- 8 *at reasonable prices to all consumers and may attract new electric*
- 9 *supply into the State of California.*
- 10 (b) *It is the intent of the Legislature to do all of the following:*
- 11 (1) *Provide guidance for the procurement of electricity by an*
- 12 *electrical corporation.*
- 13 (2) *Establish standards under which the procurement of*
- 14 *electricity by an electrical corporation will be deemed reasonable.*
- 15 (3) *Eliminate the need for after-the-fact reasonableness*
- 16 *reviews of an electrical corporation's electricity procurement*
- 17 *contracts, practices, and related expenses.*

1 SEC. 2. Section 332.3 is added to the Public Utilities Code, to
2 read:

3 332.3. (a) It is the intent of the Legislature that, no later than
4 July 1, 2001, an electrical corporation shall achieve and thereafter
5 maintain on an annual basis a portfolio of electric supply
6 commitments for its bundled service customers, which shall
7 consist of forward contracts sufficient to supply no less than 50
8 percent, and no greater than 95 percent forward contracts, with
9 terms up to 10 years in duration, of that portion of the electrical
10 corporations's supply portfolio that was not already being
11 supplied from generating resources owned or contracted for by
12 electrical corporations. As long as an electrical corporation
13 maintains such a portfolio mix, its portfolio may not be subject to
14 reasonableness reviews by the commission.

15 (b) The commission shall reflect in bundled service rates, and
16 deem reasonable without a reasonableness review, any contract
17 entered into by an electrical corporation in accordance with the
18 guidelines set forth in this section or any contract, for which, upon
19 application therefor by the electrical corporation, the commission
20 has granted approval. For all of those contracts, there may be no
21 after-the-fact review, whether based on the individual contracts,
22 the electrical corporation's portfolio, or otherwise.

23 (c) The commission shall deem standard forward contracts
24 reasonable if one or more of the following applies:

25 (1) Those contracts are entered into pursuant to or compared
26 with the results of an open, competitive bidding process. One
27 acceptable form for an open, competitive bid is a request for
28 proposals (RFP). The commission shall deem reasonable any
29 contract the price of which is within the range of prices that is no
30 higher than the lowest 25 percent of the bids received during that
31 particular RFP or other bidding process. An RFP shall be
32 considered open and competitive if the request was distributed to
33 at least 15 potential suppliers, and notice of the RFP was posted
34 on the electrical corporation's website concurrently with the
35 distribution of the RFP or the procurement through electricity
36 exchanges or brokerage services which may also include
37 electronic platforms with access to more than 15 potential
38 suppliers.

39 (2) The price of the contract is lower than the electrical
40 corporation's then-current volume-weighted portfolio cost as

1 calculated by the electrical corporation. However that portfolio
2 cost shall be determined excluding any generation assets retained
3 by the electrical corporation.

4 (3) The contract was entered into by the electrical corporation
5 through the Independent System Operator or any other market or
6 power exchange recognized by the commission.

7 (4) The contract was executed by the electrical corporation
8 before January 1, 2001.

9 (d) The commission shall deem a nonstandard contract for
10 electricity reasonable if the contract price is below the electrical
11 corporation's then-current volume-weighted portfolio cost as
12 calculated by the electrical corporation, assuming an equivalent
13 level of annual production. However, that portfolio cost shall be
14 determined excluding any generation assets retained by the
15 electrical corporation. The fuel costs associated with those
16 contracts are deemed reasonable. As used in this subdivision, the
17 term "nonstandard contract for electricity" includes a tolling
18 agreement, a peaking service agreement, a load-following service
19 agreement, a capacity agreement, an exchange agreement, an
20 ancillary services agreement, or another agreement for a service
21 that is not traded on an exchange.

22 (e) Electrical corporations may enter into financial and other
23 contracts to moderate the price risk associated with long-term
24 forward contracts, including natural gas used to produce power
25 under these contracts. Those contracts may be gas-based or
26 electricity-based. Those contracts and the premiums paid by the
27 electrical corporations for those contracts also shall be deemed
28 reasonable if the contracts are entered into by the electrical
29 corporation for the purpose of hedging the price risk associated
30 with the electrical corporation's procurement portfolio.

31 (f) A purchase transaction entered into between an electrical
32 corporation and a renewable energy developer shall be deemed
33 reasonable if contract prices to the electrical corporation for
34 renewable energy are less than 115 percent of the average of the
35 lowest bid established pursuant to paragraph (1) of subdivision
36 (c).

37 (g) Under the protection of Section 583, each electrical
38 corporation shall file quarterly with the commission its long-term
39 forward contracts and financial contracts, together with an
40 explanation of how those contracts meet the guidelines set forth in



1 *this section. The commission may verify the accuracy of these*
2 *submissions for the sole purpose of ensuring compliance with*
3 *these guidelines.*

4 *(h) The commission shall adopt a ratemaking mechanism that*
5 *ensures that the existing bundled service customers as of the date*
6 *an electrical corporation enters into a bilateral contract to serve*
7 *those customers remain responsible for, and pay, their*
8 *proportionate share of the electrical corporation's obligations*
9 *under each contract.*

10 ~~Code, to read:~~

11 ~~390.5. Notwithstanding any other provision of law, the~~
12 ~~commission shall immediately establish, by rule or order,~~
13 ~~procedures for the preapproval of forward contracts, including,~~
14 ~~but not limited to, bilateral contracts, for the purchase of electrical~~
15 ~~energy. Those procedures shall provide for the protection of the~~
16 ~~proprietary information of utilities and other affected parties.~~

17 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
18 ~~Section 6 of Article XIII B of the California Constitution because~~
19 ~~the only costs that may be incurred by a local agency or school~~
20 ~~district will be incurred because this act creates a new crime or~~
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~
23 ~~the Government Code, or changes the definition of a crime within~~
24 ~~the meaning of Section 6 of Article XIII B of the California~~
25 ~~Constitution.~~

26 ~~SEC. 3. This act is an urgency statute necessary for the~~
27 ~~immediate preservation of the public peace, health, or safety~~
28 ~~within the meaning of Article IV of the Constitution and shall go~~
29 ~~into immediate effect. The facts constituting the necessity are:~~

30 ~~In order to immediately establish procedures for the~~
31 ~~preapproval of forward contracts for the purchase of electrical~~
32 ~~energy, thereby providing a way of reducing electricity consumer~~
33 ~~exposure to volatile electrical energy market prices, it is necessary~~
34 ~~that this act take effect immediately.~~